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Posthumous AI avatars are here. Estate planning needs to adjust
By Rob Burgess
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Last week, former CNN correspondent Jim Acosta promised a "one-of-a-kind interview."

This turned out to be an understatement.

The "guest" in question for that episode of "The Jim Acosta Show" was Joaquin Oliver.

Except, it wasn't really Oliver. The real Joaquin Oliver was killed in 2018 at age 17 during the mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida.

The interviewee, such as it was, was an avatar of Joaquin Oliver created using artificial intelligence, with the permission of his father, Manuel "Manny" Oliver.

Though this scenario may sound like it's ripped from the pages of a science fiction novel, this form of digital necromancy will become increasingly visible as the development of AI technology accelerates.

Experts in estate planning say being proactive with clients about their wishes and how they want their legacy handled can help prevent the creation of unwanted posthumous AI facsimiles.

Clients are already ringing alarm bells
The issue has already arrived for William "Bill" London, partner at Kimura London & White in Irvine, California. Several clients have asked during estate planning meetings how to prevent their name, voice or likeness from being used to train or power AI avatars after their death, he said, motivated in some cases by high-profile events like the recent Acosta-Oliver episode.

"Though legislation is catching up, well-crafted estate documents today can effectively safeguard or authorize AI applications in line with your personal preferences," he said.

Similarly, Chad D. Cummings, CEO of estate planning and tax firm Cummings & Cummings Law in Bonita Springs, Florida, said he has also had clients express alarm about potential unauthorized posthumous use of their name, voice or likeness through AI.

"These concerns have most often arisen in the context of digital content creators and professionals whose image or voice is already accessible online," he said,

people including physicians and public figures.

The apprehension can be both reputational and spiritual, said Cummings.

"Some clients, especially those with strong religious convictions, view the digital resurrection of their persona as a potential affront to human dignity and a distortion of their legacy," he said.

State laws are varied; federal legislation, nonexistent

Critically, there is no comprehensive federal statute governing posthumous AI likeness rights.

Instead, there is a patchwork of state statutes, relevant estate planning documents and contract law, said Cummings.

"As such, estate planners must treat this issue as a form of digital asset protection and embed tailored language directly into the dispositive instruments to ensure clarity, control and enforceability," he said. "Clients should not assume that silence will prevent misuse. Proactive drafting is essential."

Estate planning language should identify the jurisdictional basis for enforceability, invoking state-level publicity statutes, said Cummings. For example, in Florida, Section 540.08 of the Florida Statutes prohibits unauthorized commercial use of a person's name or likeness and explicitly extends those rights postmortem for 40 years. And in Texas, Chapter 26 of the Texas Property Coderecognizes a freely transferable property right in a decedent's name, voice, likeness and signature for 50 years after death. The statute allows those rights to be conveyed by will, trust or contract.

During his time as the chief security officer for the state of Delaware, Solomon Adote, now chief information security officer at digital estate management platform The Estate Registry, helped pass AI deepfake legislation aimed at mitigating the malicious use of individuals' likenesses.

The name, voice, image and likeness rights are governed by intellectual property laws, mostly at the state level and are often referred to as publicity rights, said Amanda Paracuellos, founding partner of Paracuellos Law Group in Laguna Beach, California, who has over 25 years of experience drafting contracts and handling intellectual property licensing and trust and estates.

"Most states have the basic rule that each individual controls their own publicity rights," she said. "They are your property. So you can use them yourself, prevent others from using them and assign or license them to third parties."

This most often arises with celebrities who can profit from licensing, said Paracuellos.

"The interesting thing is that I think that maybe a third of states allow publicity

rights to continue after the death of the person," she said. "A person's state of domicile at the time of their death is the law that applies, and so if you die in a state that recognizes publicity rights after death, then you would be able to license them or bequeath them in your will to anyone you wish."

Publicity rights apply to everyone, not just celebrities, so this would presumably mean that any individual could, in theory, assign their publicity rights to an heir and also leave instructions and limitations as to how the designated heirs can use the rights, or not use them, said Paracuellos.

"If you live in a state that does not recognize publicity rights at the time of your death, you will be out of luck," she said. "If the state does not recognize the existence of the rights for deceased persons, that means that anyone can exploit that deceased person's name and likeness. If your state does recognize publicity rights after death, and if you don't otherwise make arrangements, those rights will pass to your heirs in accordance with whatever the default rules are under your state's law for property inheritance when there is no available will or trust to give direction."

Famously, this became an issue for the estate of late musician Prince, who died as a resident of Minnesota, a state that does not recognize any rights after death. The legislature tried to pass a law retroactively to address the issue for Prince, but it failed to pass.

"I've never heard anyone talk about this for 'regular' people, but with the advent of AI, it is now a reality that anyone can take a photo of anyone and 'reanimate' them," said Paracuellos.

Setting clear boundaries in estate planning

Clients must leave clear directives to prohibit the unauthorized use of their name, voice, likeness, image and any other unique identifying characteristics for the creation or use of AI avatars, deepfakes or synthetic media, said Adote.

"It is important to be as specific as possible, defining what constitutes 'likeness' and 'voice' to include digital reproductions," he said. "In some cases, you will have to assert your postmortem intellectual property rights over your persona. While not all jurisdictions recognize a postmortem right of publicity, clearly stating your intent can provide a basis for your estate to act."

To that end, Cummings said he recommends including a right of publicity clause in the client's estate plan, either within their revocable living trust or as a standalone instrument such as a posthumous rights addendum.

"This clause should explicitly prohibit the replication, training or use of the client's voice, image, biometric signature or persona in AI models or digital avatars without the express written authorization of the personal representative or trustee," he said.

Allowing posthumous AI reproduction can be planned for, too

On the other hand, if a client wishes to permit future use of their persona using AI, Cummings said his firm will draft documents that define highly specific parameters — such as limiting the avatar's usage to private, noncommercial purposes by named descendants, prohibiting political or religious messaging or requiring fiduciary review before any licensing.

"These rights can be granted conditionally or set to expire after a defined number of years," he said.

For those who wish to allow their digital legacy to live on through AI, but with careful controls, the estate plan must clearly consent to the creation and use of the client's AI avatar, voice and likeness after death, said Adote.

"This removes any ambiguity," he said. "It must also specify how your AI avatar can be used, to include for educational, artistic or family purposes."

Where possible it must also specify forbidden uses, duration of use and the distribution of funds generated from its use, said Adote.

"These recommendations may not completely address all the risks here, but should provide an opportunity for critical conversations with legal and financial advisors today," he said.